IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :5256 of 2006

Dated: 17th July 2006.

Between:

M/s. Vuma Holiday Inns Pvt. Ltd., Donabunda.

..... PETITIONER

AND

The Principal Secretary, Youth Advancement, Tourism & Culture (Tourism Department), Government of Andhra Pradesh and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.5256 OF 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a Private Limited Company. The State of Andhra Pradesh took a policy decision in the year 1998 to extend certain incentives to the recognized Tourism Projects, in order to encourage tourism in the State of Andhra Pradesh. Such a policy was enunciated in G.O.Ms.No.6, Youth Advancement Tourism and Culture (Tourism) Department, dated 18-12-1998. Under the said G.O., various incentives were created and relevant in the context of the present case, being, investment subsidy, the G.O., in this regard reads as follows:

> " (a) Investment Subsidy:
>
> Investment Subsidy of all Tourism ventures above a particular level of investment i.e. Rs.20.00 lakhs capital expenditure shall be eligible for 20% investment subsidy subject to a maximum of Rs.20.00 lakhs. These concession shall be extended to Hotels, Golf Courses, Theme Parks etc. as annexed to this order.

In the context of sales tax, the G.O., reads as follows:

> " (d) Sales Tax:

(1) Sales Tax is exempted 100% for
5 years for the New Projects Units coming up in Special Tourism Areas and Notified Tourism Areas and also for Special Projects. This will be limited to 3 star and above hotels, amusement parks and Theme parks.

(2) Special Tourism Areas shall include the entire areas of the notified special Tourism Areas. For allother N.T.A's (Notified Tourism Ares), Panchayat or Municipal limits will be applicable.

(3) Sales tax exemption is limited to 100% of the fixed capital cost."

In the annexure to the said G.O., it is stipulated as follows with regard to Sales Tax.

" *(d) Sales Tax:*

(1) Sales Tax is exempted 100% for 5 years for the new units and Special Projects limited to 3 star hotels & above, Amusement Parks, Theme Parks coming up in Special Tourism Areas and Notified Tourism Areas.

(2) Special Tourism

Areas will include the entire areas of the notified special tourism areas. For all other NTAs (Notified Tourism Areas), Panchayat or Municipal limits will be applicable.

(3) Sales Tax exemption is limited to 100% of the fixed capital cost."

(Emphasis supplied)

The petitioner asserted in the affidavit filed in support of the writ petition that it established a Theme Park, situated outside the city of Vijayawada, near the banks of river Krishna with facilities like swimming pool, boating and other water related games. Thereafter the petitioner submitted an application dated 21-09-2000 before the 2nd respondent for registration of the said unit as required under the abovementioned G.O. The 2nd respondent herein, by his proceedings dated 07-03-2002 acknowledged the application of the petitioner and stated that the unit of the petitioner had been inspected and also certified that all the requisite conditions have been fulfilled and is found to be an eligible unit to be registered under the new Tourism Policy 1998. The relevant portion of the communication reads as follows:

" The application filed by M/s Vuma Holiday Inn Pvt Ltd.,

> Vijayawada on 9-12-1999 through its Managing Director for registration of the Hotel under the Special Tourism Area notified vide G.O.Ms.No.69, YAT&C (T) Dept., date: 9-4-2001. The hotel has been inspected and found that the hotel project has been completed and is brought under operation from 24-10-1999.
>
> Since the requisite conditions have been fulfilled and it is found to be an eligible unit, it is registered under New Tourism Policy 1998."

Thereafter the petitioner claimed exemption of sales tax as held out in G.O.Ms.No.6, dated 18-12-1998, referred to earlier. The 2nd respondent by his communication dated 20-12-2003, under intimation to the petitioner and 5th respondent, held as follows:

> " A copy of the reference second cited is enclosed. M/s Vuma Holiday Inns Ltd., Donabanda has been registered as a Tourism Unit under the new Tourism Policy 1998 vide reference 1st cited for extending incentives of Sales Tax exemption as envisaged in the Tourism Policy 1998.
>
> As the matter for extending the Sales Tax exemption has been placed before STPB for a decision. I request you not to insist for payment pending decision by the Government."

The claim of the petitioner for investment subsidy, in terms of G.O.Ms.No.6, dated 18-12-1998, referred to earlier, was considered by the 1st respondent along with certain other similar cases and accepted in G.O.Rt.No.108, Youth Advancement, Tourism and Culture (T) Department, dated 27-1-2005. The relevant portion reads as follows:

> " In the GO 1st read above orders were issued for sanction of investment subsidy to tourism ventures above a particular level of investment which shall be eligible for 20% investment subsidy subject to a maximum of Rs.20.00 Lakhs. The following 12 Units are eligible for incentives subsidy as approved by the State Level Committee vide GO 3rd read above..
>
> 1. M/s Kamat Lingapore, Hyd.
> 2. M/s Bhimas Residency, Tirupathi
> 3. M/s DR Hotels, Nellore
> 4. M/s Mount Opera Theme Park Hyd.
> 5. M/s Aditya Park Inn, Hyd.
> 6. M/s Uma Holiday Inn, Vijayawada.
> 7. M/s Kalyan Residency, Tirupathi
> 8. M/s Ratnagiri Resorts, Annavaram.
> 9. M/s Daspalla Executive Court. Visakhapatnam
> 10. M/s Raghunath Resorts, Tirupathi
> 11. M/s Yogi Bear International(P)

Ltd.Hyderabad.

12. M/s Sequel Resorts Lakkaram, Khammam"

(Emphasis supplied)

In fact, in the application, claiming various benefits indicated in G.O.Ms.No.6, dated 18-12-1998 (a copy of which is filed as annexure to the writ petition), the petitioner indicated its activity as one of the Theme Park, Motel and Resort providing wayside amenities to Tourists. Obviously, when the State decided to extend investment subsidy under G.O.Rt.No.108, dated 27-1-2005, finding that the petitioner is eligible for the incentives in terms of G.O.Ms.No.6, dated 18-12-1998, it has accepted the fact that the petitioner's activity falls under the category of a Theme Park, Motel, etc. However, when the case of the petitioner for exemption of the tax under the A.P.G.S.T. Act, came to be considered, the 1st respondent came to the conclusion that the petitioner is not entitled for such benefit and such a conclusion is recorded in G.O.Ms.No.4, Youth Advancement, Tourism & Culture (T) Department, dated 13-02-2006. The relevant portion of the G.O. reads as follows:

> " In the said meeting on 19-12-2005, the case of M/s Vuma Holiday Inn, Vijayawada was also considered for issue of Eligibility Certificate as per the orders issued in the G.O. second

read above. As per the G.O. second read above, sales tax exemption is limited to 3-Star and above hotels, amusement parks and Theme Parks. M/s Vuma Holiday Inn, Vijayawada is only a 1-Star hotel. Therefore, the Committee considered that M/s Vuma Holiday Inn, Vijayawada is not eligible for issue of Eligibility Certificate to claim sales tax exemption as provided under the Tourism Policy 1998, vide GO 2nd read above.

Accordingly, after careful consideration of the matter, the Government hereby order that M/s Vuma Holiday Inn, Vijayawada is not eligible to claim exemption from payment of sales tax under the A.P. General Sales Tax Act, which was provided to the Tourism units vide G.O., second read above, under the Tourism Policy, 1998, and therefore, Eligibility Certificate to claim exemption from payment of Sales Tax under the APGST Act, as per the Tourism Policy 1998 is rejected to M/s Vuma Holiday Inn, Vijayawada."

The petitioner submits that in view of the fact that its case was considered and found eligible for the benefit of investment subsidy under G.O.Ms.No.6, dated 18-12-1998, referred to earlier, under the category that the petitioner is running a Theme Park, the decision of the 1st respondent to reject its claim for the benefit of

sales tax exemption in terms of G.O.Ms.No.6, dated 18-12-1998, is wholly irrelevant, arbitrary and unsustainable.

On behalf of respondents 1 to 3, a common counter-affidavit is filed and the case of the respondents is as follows:

> " 2. In reply to para 1 to 4, it is submitted that it is a fact that Vuma Holiday Inns(P) Limited has applied on
> 9-12-1999 for registering their unit under the Tourism Policy, 1998. As on that date, Donabanda near Vijayawada where this unit is located is neither included under Notified Tourism Area (NTA) nor under Special Tourism Areas (STA). Further it was not a Special Tourism Project with a project cost of Rs.10 crore or more. Subsequently Government vide G.O.Ms.no.69, Youth Advancement, Tourism and Culture (T) Department, dated 9-4-2001
> (Annexure-I) have issued order notifying Vijayawada and surrounding areas as a Notified Tourism Area (NTA) for development as Pilgrimage Centre. In accordance with the Tourism Policy the unit has been registered as a hotel project by the Director of Tourism vide Proceedings.No.3672/A3/2000, dated. 7-3-2002 (Annexure –II). The unit has been classified under 1 Star category, as per Star classification order of Government of India Regional Tourist

Office, Chennai vide letter No. GOIT. MAS. HRACC.2001(AP)/144, dated. 1-11-2001 (Annexure –III). According to the Andhra Pradesh Tourism Policy, 1998, the Sales Tax exemption shall be extended to only 3 star and above hotels, amusement Parks and theme parks. Whereas in the instant case the Unit has been classified as 1 star category and registered as a hotel only and therefore the State level Committee opined that the unit is not eligible to issue eligibility certificate to claim sales tax exemption as provided under the Tourism Policy, 1998 vide G.O.ms.no.6, Youth Advancement, Tourism and Culture (T) Department, dated 18-12-1998, (Annexure _ IV) and issued orders accordingly vide G.O.Ms.No.4, Youth Advancement, Tourism and Culture (T) Department, dated 13-2-2006 (Annexure – V)."

The crux of the counter is that on the date of application of the petitioner, i.e., 09-12-1999, for registering its unit under the Tourism Policy of 1998, the place, where the unit of the petitioner was located was not a part of "Notified Tourism Area" or " Special Tourism Area". These two expressions are to be found in G.O.Ms.No.6, dated 18-12-1998, in the paragraph dealing with the sales tax exemption, which is already extracted earlier. As rightly pointed out by the

respondents, the area in which the petitioner's unit is located, i.e., the Krishna District, came to be notified as a Special Tourism Area, only on the 9th April 2001, in G.O.Ms.No.69, dated
09-04-2001, but in our view, the fact that the area came to be notified as a Special Tourism Area, subsequent to the enunciation of the Tourism Policy, makes no difference insofar it pertains to the grant of the benefits under the said policy initiated under G.O.Ms.No.6. dated 18-12-1998. The G.O. does not, anywhere specify that the benefits would be available for only those existing units as on the date of the enunciation of the policy. On the other hand, the language of G.O. containing the policy statement makes it clear that the benefits initiated thereunder are continuing benefits for any unit specifying the requirements indicated therein. Even otherwise, if the whole idea of initiating a policy in G.O.Ms.No.6, dated
18-12-1998, is to promote the tourism, unless there is something express in the law restricting the benefit only to the existing units, the policy, in our view, cannot be read in such a way restricting the benefit only to the existing units.

The next objection of the respondents appears from the counter is that the petitioner's unit has been registered under the abovementioned policy only as hotel project, but not as a Theme Park or a Resort. If the petitioner's unit is to be treated only as a hotel, the same

is classified as a

1-Star category hotel and therefore, not entitled for the benefit of sales tax exemption within the terms of G.O.Ms.No.6, dated 18-12-1998, as the benefit of sales tax exemption under the said G.O. is available only to the hotels, which are categorized as 3-Star or above.

This statement of the respondents, in our view, is liable to be rejected for the reason that the respondents base, such a statement, on a communication issued by the 2nd respondent on 07-03-2002, which is extracted earlier and at the cost of repetition, we wish to extract the relevant portion again, as follows:

> " The application filed by M/s Vuma Holiday Inn Pvt Ltd., Vijayawada on 9-12-1999 through its Managing Director for registration of the Hotel under the Special Tourism Area notified vide G.O.Ms.No.69, YAT&C (T) Dept., date: 9-4-2001. The hotel has been inspected and found that the hotel project has been completed and is brought under operation from 24-10-1999.
>
> Since the requisite conditions have been fulfilled and it is found to be an eligible unit, it is registered under New Tourism Policy 1998."

It can be seen from the above that in the 1st paragraph of the communication, the 2nd respondent

stated that the application of the petitioner is one for registration of the hotel under the new Tourism Policy 1998. If really the respondents are of the opinion that the petitioner's unit does not qualify for being registered as a Theme Park, Motel and a Resort and qualifies to be registered under the new Tourism Policy only as a hotel, they should have clearly indicated so, to the petitioner. On the other hand, as can be seen from the 2nd paragraph of the communication dated 07-03-2002, the 2nd respondent informed the petitioner that the requisite conditions have been fulfilled and it is found to be an eligible Unit for registering under the new Tourism Policy. When the petitioner claimed the incentive by way of sales tax exemption, the respondents claim that a Committee, which is entrusted with the responsibility of examining the case, came to the conclusion that the petitioner's unit is only a hotel, in its meeting dated 19-12-2005. At Paragraph No.7 of the counter-affidavit filed by the respondents it is stated in this regard as follows:

> " 7. It is submitted that, since the term of the State Level Committee expired by 4-3-2004, the Committee was reconstituted vide G.O.Rt.No.947, Youth Advancement, Tourism and Culture (T) Department, dated 10-10-2005 (Annexure –X). The Committee in its meeting held on 19-12-2005 to consider the cases of the hotels/units for issue of Eligibility Certification. The Committee found that M/s Vuma

> Holiday Inns Pvt. Ltd., Vijayawada is only a hotel as per the Registering Authority (Director of Tourism) and further it was only a 1-Star hotel as per Star classification order of Government of India Regional Tourist Office letter No. GOIT/ MAS/ HRACC/2001(AP)/144, dated 1-11-2001. The Committee bases it's decisions on the information furnished by the competent authority i.e., Director of Tourism who is responsible for registration of Tourism units as per A.P. Tourism Policy, 1998 and also he designated authority to issue the eligibility certificate for various incentives."

The expressions neither 'hotel' nor 'Theme Park' are defined under any law or even under the Tourism Policy. Nonetheless, there could exist a difference between a hotel and a Theme Park. If the respondents decided to treat a particular case, as one, falling under the category of a hotel or under the category of a Theme Park, etc., they must clearly have guidelines as to how such a decision is to be reached. The respondents, in our view, cannot take a decision on *ad hoc* basis in each individual case. No such guidelines are placed before this Court. In the absence of any such guidelines, the conclusion of the respondents that the unit of the petitioner, which is otherwise found to be eligible for grant of investment subsidy under G.O.Ms.No.6, dated

18-12-1998, is not eligible for the sales tax exemption, in our view, is required to be classified as a wholly irrational and arbitrary conclusion, without any material on record or basis in law.

Further, if for any reason the application of the petitioner claiming its case to be treated as a unit falling under the category of a Theme Park, etc., is rejected, the petitioner should have been given an opportunity before rejecting its claim and should have been put on notice the basis on which its application is sought to be rejected. None of the safeguards have been followed in the present case.

In the circumstances, we are of the opinion that the impugned order is wholly arbitrary, illegal and unsustainable and therefore, quashed. The respondents are directed to consider the case of the petitioner for exemption in terms of G.O.Ms.No.6, dated 18-12-1998, referred to earlier.

For the foregoing discussion, the writ petition is allowed at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

17th July 2006
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